RESOLUTION NO. 12-127

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "AGREEMENT FOR CONVEYANCE OF REAL PROPERTY" BETWEEN THE CITY AND SCHOOL BOARD OF MONROE COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, discussions between City and School District staff resulted in a Memorandum of Understanding between the School Board and City of Key West; and

WHEREAS, the attached agreement is intended to define the respective rights and obligations between the parties necessary for the City to acquire, and the School Board dispose of, a significant portion of the Glynn Archer School site;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached "Agreement For Conveyance Of Real Property" is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of April, 2012.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of April, 2012.

Filed with the Clerk on April 4, 2012.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

AGREEMENT FOR THE CONVEYANCE OF REAL PROPERTY

THIS AGREEMENT is made and entered into this 24 day of April, 2012, by and between the **BOARD OF PUBLIC INSTRUCTION OF MONROE COUNTY, FLORIDA**, n/k/a The School Board of Monroe County Florida whose address is 241 Trumbo Road, Key West, Florida 33040 (hereinafter "School Board"), and the **CITY OF KEY WEST, FLORIDA,** a municipal corporation, whose address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "CITY").

Whereas, the School Board has commenced construction at the HOB campus for the relocation of a new elementary school for the students currently housed at Glynn R. Archer School; and

Whereas, the School Board has indicated the Glynn R. Archer School site will be available once the School Board completes plans to relocate students to the new facility; and

Whereas, on November 2, 2010, 70.5% of the voters casting ballots authorized the City of Key West to move forward with negotiations for the acquisition of the Glynn R. Archer School property; and

Whereas, the School Board and City have entered into a Memorandum of Understanding Regarding Parameters for Negotiation of Glynn R. Archer School Property; and

Whereas, the parties desire a written agreement between them providing the terms by which the School Board agrees to convey the subject property and the City agrees to accept title to the subject property.

NOW THEREFORE, in mutual consideration of the benefits that will accrue to the parties in faithfully abiding by the terms of this Agreement, School Board and City agree as follows:

1. In consideration of Ten Dollars ($10.00) in hand, paid by the City, the receipt of which is hereby acknowledged, and the mutual conditions and covenants contained herein, the School Board agrees to convey to the City certain real property upon the terms and conditions hereinafter set forth, at no cost to City, for all of the real property and other interests, which real property shall include all tenements, hereditaments, together with all water and other rights, easements, appurtenances, and any and all of the School Board's rights in or arising by reason of ownership thereunto belonging, owned by the School Board, situate and lying in the County of Monroe, State of Florida, more particularly described as follows; to-wit:

   _____, (hereinafter "Property").

   (Legal description consistent with conveyed and retained property described in exhibit 1 shall to be supplied prior to closing)

   The said conveyance of the Property shall take place on a date mutually agreeable to the parties However, in no event shall the conveyance take place later than June 28, 2013.

2. The School Board agrees, subject to compliance with all legal requirements for surplusing the subject property, which the School Board agrees to undertake with all due diligence, that it has the full right, power and authority to convey, and that it will convey to the City the fee simple title

together with legal and practical access thereto clear, free and unencumbered, except subject to the following easements or reservations:

Existing easements for canals, ditches, flumes, pipelines, railroads, public highways and roads, telephone, telegraph, power transmission lines and public utilities.

The City, at the City's expense, within the time allowed to examine evidence of title, may have the real property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the real property or that improvements located thereon encroach on setback lines, easements, lands of others, or violate any restrictions, contract covenants, or applicable governmental regulations, the same shall constitute a title defect.

The School Board shall convey a marketable title subject only to the aforementioned liens, encumbrances, exceptions or qualification set forth herein. Marketable title shall be determined according to applicable title standards adopted by authority of the Florida Bar and in accordance with law. The City shall have ninety (90) days from the effective date of this Agreement in which to examine title. If title is found defective, the City shall, within this specified time period, notify School Board in writing specifying defect(s). If the defect(s) render title unmarketable the School Board will have one hundred twenty (120) days from receipt of notice within which to remove the defect(s), failing which the City shall have the option of either accepting the title as it then is or rescinding the contract herein; thereupon the City and the School Board shall release one another of all further obligations under this Agreement. The School Board will, if title is found unmarketable, use diligent effort to correct defect(s) in title within the time provided therefore.

3. The School Board further agrees not to do, or suffer others to do, any act by which the value or title to said real property may be diminished or encumbered. It is further agreed that any loss or damage occurring prior to the vesting of satisfactory title in the City by reasons of the unauthorized alteration of the improvements located on the subject property, or because of fire or other natural causes, shall be borne by the School Board; and that, in the event any such loss or damage occurs, the City may refuse, without liability, to accept conveyance of the subject property, or it may elect to accept conveyance of the subject property.

4. The School Board further agrees that, during the period covered by this instrument, officers and accredited agents of the City shall have at all proper times the unrestricted right and privilege to enter upon the Property for all proper and lawful purposes, including examination of the subject property and the improvements located thereon. All liability for said visits shall be borne by the City. All visits shall be appropriately scheduled with School Board agents so as to cause as little interference with school operations as possible. Consent by the School Board not to be unreasonably withheld.

5. The School Board will execute and deliver upon closing a good and sufficient deed of warranty conveying to the City a safe title to the Property of such character as to be satisfactory to the legal counsel of the City and said deed shall provide that the use, occupation and operation of the rights-of-way, easements and reservations retained therein, shall be subordinate to and subject to such rules and regulations as may be prescribed by the City governing the use, occupation, protection and administration of the Property. Further, the said warranty deed shall contain a restrictive covenant and reverter clause restricting the use of the Property by the City of Key West for the public purposes of a City Hall and/or Community Center.

6. The City shall pay the following expenses associated with the conveyance of the Property: deed recording fees, settlement fees, abstract fees, title examination fees, the City's attorney's fees, and title insurance and commitment. The School Board shall pay the expenses of documentary

stamps to be affixed to the deed, if applicable. Full possession of the Property shall pass to the City as of the date the deed is tendered to the City subject only to the reservations stated in Section 2 above.

7. It is mutually agreed that an abstract, title insurance policy or other evidence of title to the Property herein contracted to be conveyed, satisfactory to the legal counsel of the City will be obtained by the City at its expense. The School Board expressly agrees herein to furnish to the City any documents in School Board possession establishing evidence of title including, but not limited to, abstracts, title commitments, title policies and opinions of title.

8. It is mutually understood and agreed that the City may not assign this contract.

9. It shall be the obligation of the School Board to pay all taxes and assessments outstanding as liens at the date title vests of record in the City, whether or not such taxes and assessments are then due and payable. However, this shall specifically exclude any claims by City against School Board for stormwater utility fees, to which the School Board has objected.

10. City will, at City's expense and within 180 days from Effective Date ("Due Diligence Period"), determine whether the Property is suitable, in City's sole and absolute discretion, for City's intended use and development of the Property. During the Due Diligence Period, City may conduct any tests, analyses, surveys and investigations ("Inspections") which City deems necessary to determine to City's satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with Americans with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that City deems appropriate to determine the suitability of the Property for City's intended use and development. The School Board shall provide to the City all documents in its possession related to the use and condition of the Property, including but not limited to environmental reports and reconstruction or rehabilitation estimates in whatever form they exist. City shall deliver written notice to School Board prior to the expiration of the Due Diligence Period of City's determination of whether or not the Property is acceptable. City's failure to comply with this notice requirement shall constitute rejection of the Property in its present "as is" condition. School Board grants to City, its agents, contractors and assigns, the right to enter the Property at any time (as set forth in paragraph 4 above) during the Due Diligence Period for the purpose of conducting Inspections; provided, however, that City, its agents, contractors and assigns enter the Property and conduct Inspections at their own risk. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the CITY, to the extent of the School Board's potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the School Board, its officers, and employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the CITY or any third party vendor contracted by the CITY arising from the conduct of any and all inspections or any work authorized by City. City will not engage in any activity that could result in a mechanic's lien being filed against the Property without School Board's prior written consent. In the event this transaction does not close, (1) City shall repair all damages to the Property resulting from the Inspections and return the Property to the condition it was in prior to conduct of the Inspections, and (2) City shall, at City's expense, release to the School Board all reports and other work generated as a result of the Inspections.

Walk-through Inspection: City may, on the day prior to closing or any other time mutually agreeable to the parties, conduct a final "walk-through" inspection of the Property to determine compliance with this paragraph and to ensure that all Property is on the premises.

11. The property shall be delivered at closing free of any tenant or occupancy whatsoever.

12. This Agreement shall become effective upon execution by both parties and may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered the same agreement.

13. The School Board shall retain title to the real property upon which the buildings commonly referred to as the Gym and Art buildings are currently situated, described as Buildings "E" and "D" on Exhibit "1", which is attached hereto and incorporated by reference. These two parcels of real property are more particularly described as follows:

    (Legal description for the property retained consistent with exhibit 1 shall to be supplied prior to closing), (hereinafter "Retained Property").

    It is the intent of the School Board to utilize the Retained Property as administrative space. The School Board recognizes its obligation to keep the Retained Property in a state of good repair and shall devote the necessary capital resources to maintain the property. In the event the School Board desires to convey its interest in the Retained Property, the City shall have the right of first refusal to acquire such Retained Property. Should the Retained Property be conveyed following the City's declination to acquire the Retained Property, the deed of conveyance shall contain a restrictive covenant and reverter clause restricting the use of the Retained Property to public purposes.

14. The City shall occupy the buildings described as Buildings "A" and "B" on Exhibit "1" and demolish the building described as Building "C" on Exhibit "1". The City intends to construct a ground-level parking lot for the public in the general area currently occupied by Building "C", (hereinafter "Parking Lot").

15. The City shall renovate the existing auditorium located within Buildings "A" and "B" for use as a public meeting space. However, the historic mural located in the auditorium shall remain. Further, City shall permit School Board to utilize the renovated auditorium without charge for the purpose of conducting public meetings upon proper notice to City. It is anticipated that School Board will conduct board meetings twice monthly as well as organizational meetings and workshops. Regular meetings of the City Commission and Monroe County School Board will take preference over any advisory board meetings.

16. The City shall provide one office for the School Board Superintendent and one office to be utilized jointly by all School Board members and an administrative assistant within Building "A". These two private offices shall be located near the entrance to Building "A" such to be readily identifiable to the public. Each office shall be separated from administrative assistant to assure privacy._ The School Board shall reimburse City for costs, (exclusive of the costs of construction) including utilities and maintenance, of the said two offices on a prorated basis based on the square footage of the two offices relative to the total square footage of Building "A". The costs shall include, but not be limited to, electric, water, sewer, insurance, and custodial service.

17. School Board intends to renovate or reconstruct the buildings currently situated on the Retained Property for the purpose of providing office space for its administrative personnel. Upon School Board's completion of the said renovation or reconstruction, School Board shall be permitted joint use of the Parking Lot to enable School Board staff and members of the public to park in the vicinity of the Retained Property. Based upon the current square footage of the Retained Property, it is anticipated that School Board will require approximately 32 parking spaces under the City's Code of Ordinances. Further, City shall grant School Board an easement across City's property in order to provide the School Board ingress and egress to the Retained Property during the renovation or reconstruction and thereafter.

18. In the event the City chooses to rename buildings "A" and "B", the City shall retain the name "Glynn Archer" in some form, such as "Josephine Parker City Hall at Historic Glynn Archer School." Alternatively, the City shall name the buildings which it owns and the School Board name the building to which it retains ownership.

19. Simultaneously with School Board's conveyance of the Property to the City, the City shall at no cost to School Board permit the School Board to utilize property adjacent to the Gerald Adams School and the City's proposed transit facility on Stock Island for the purpose of parking approximately 14 to 20 of School Board's buses. The said area to be provided to School Board shall be a minimum of 6,720 square feet. Such area shall be within the one acre immediately adjacent to the Gerald Adams site depicted in Exhibit "2 "attached hereto. Such use shall be pursuant to a long-term lease agreement in substantial conformity that attached hereto as exhibit "3". The City and School Board shall consider formal adoption of the lease agreement at a subsequent meeting prior to the Closing.

20. This Agreement is contingent upon School Board's receipt of approval to convey the Property pursuant to the Florida Inventory of School Houses and other related processes, which shall be immediately undertaken will all due diligence.

21. Except as specifically provided for in this Agreement, each provision of this Agreement shall survive the conveyance of the Property from School Board to City.

22. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the School Board and City agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe City, Florida. The School Board and City further agree that, in the event of conflicting interpretations of the terms or a term of this Agreement between the School Board and City, the issue shall be submitted to mediation prior to the institution of any other administrative of legal proceeding. Additionally, the School Board and City agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe City.

23. Notice shall be provided as follows:

Monroe County School Board
Superintendant of Schools
241 Trumbo Road
Key West, Florida 33040

City of Key West
City Manager
P.O. Box 1409
Key West, FL 33041

(305) 293-1400 (305) 809-3881

Any notice or other written communication between the agencies shall be considered delivered when posted by Certified Mail, Return Receipt Requested or delivered in person.

24. In the event one or more provisions of this Agreement are declared invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.

25. This Agreement is not intended to, nor shall it be construed as, relieving any participating agency from any obligation or responsibility imposed upon the agency by law except to the extent of actual and timely performance thereof by any other participating agency, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the participating agencies, except to the extent permitted by the Florida constitution, state statutes, case law, and, specifically, the provisions of Chapter 163, Florida Statutes.

26. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the School Board and City agree that neither the School Board nor the City or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Signatures on final page

IN WITNESS WHEREOF, the School Board and the City have entered into this Agreement by their authorized individuals as indicated below.

BOARD OF PUBLIC INSTRUCTION OF
MONROE COUNTY, FLORIDA, n/k/a The School Board
of Monroe County Florida.

Duly adopted in a public meeting upon the recommendation of the Superintendent.

BY: _____
John Dick, Chairman

ATTEST:

_____
Jesus Jara
Superintendant

April 24, 2012
Date

THE CITY OF KEY WEST, FLORIDA

_____
Craig Cates, Mayor

ATTEST:

_____
Cheri Smith
City Clerk

April 16, 2012
Date

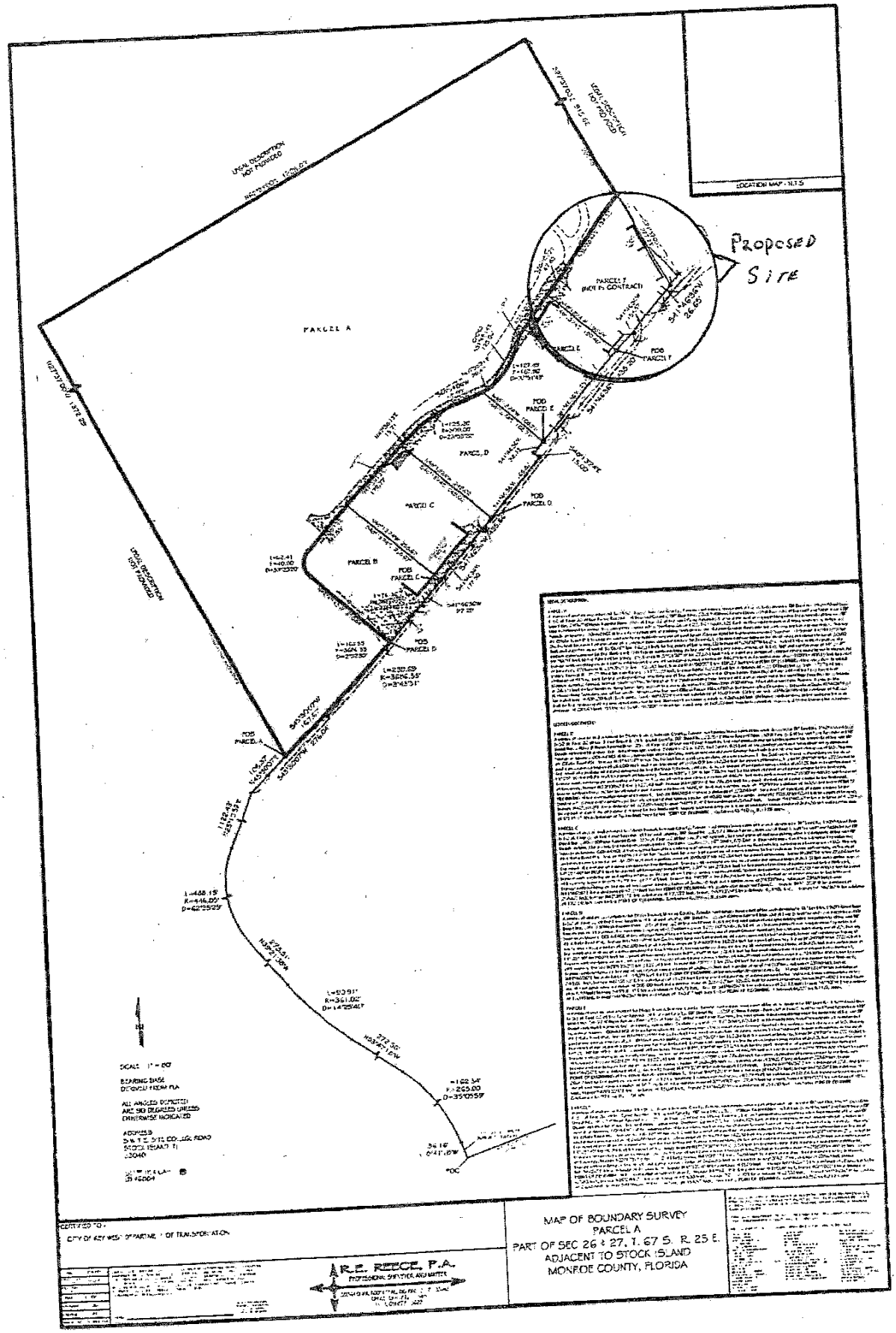
SITE PHOTO LOCATIONS

SCALE: N.T.S.

ATT-D	DATE: 05-03-10 DRAWN: EKM	REVISIONS	GLYNN ARCHER SCHOOL 1300 WHITE STREET KEY WEST, FLORIDA	PAUL R. SEMMES, P.E. #44137 DATE:	830 CRANE BOULEVARD SUGARLOAF KEY, FLORIDA (305) 294-9993 C.A. #28984

EXHIBIT

"1"


Proposed Site
PARCEL A
PARCEL B
PARCEL C
PARCEL D
PARCEL E
PARCEL F
POB PARCEL A
POB PARCEL B
POB PARCEL C
POB PARCEL D
POB PARCEL E
POB PARCEL F
LOCATION MAP - N.T.S.
MAP OF BOUNDARY SURVEY
PARCEL A
PART OF SEC 26 & 27, T. 67 S. R. 25 E.
ADJACENT TO STOCK ISLAND
MONROE COUNTY, FLORIDA
A.R.E. REECE, P.A.

EXHIBIT

"2"

RECONCILIATION AND CONCLUSION

The following indications of property value have been developed in our analysis of market data:

Reconciliation
5220 College Road, Stock Island, FL

Valuation Method:	"As Is" Fee Simple Market Value
Cost Approach	$1,990,000
Income Approach	$1,320,000
Sales Comparison Approach	Not Applicable
"As Is" Market Value, as of July 24, 2008: (Rounded):	$1,790,000

Reconciliation
5224 College Road, Stock Island, FL
Parcel B

Valuation Method:	"As Is" Fee Simple Market Value
Cost Approach	$2,480,000
Income Approach	$2,150,000
Sales Comparison Approach	Not Applicable
"As Is" Market Value, as of July 24, 2008: (Rounded):	$2,410,000

Reconciliation
5228 College Road, Stock Island, FL
Parcel C

Valuation Method:	"As Is" Fee Simple Market Value
Cost Approach	Not Applicable
Income Approach	Not Applicable
Sales Comparison Approach (Land Value)	$884,000
"As If Vacant" Market Value, as of July 24, 2008:	$884,000

The greatest weight is given to that approach in which the appraiser has the highest degree of confidence. This implies a minimum of assumptions and a sufficient quantity of data. Based on an analysis of the real estate market activity in the subject property's market area, and after considering the reliability of the Cost, Income and Sales Comparison Approaches, it is the appraisers' opinion that the Market Value

This Instrument Prepared By and
After Recording Return to:
Larry R. Erskine
Office of the City Attorney
P.O. Box 1409
Key West, Florida 33041

LEASE AGREEMENT

LANDLORD:

CITY OF KEY WEST, FLORIDA

TENANT:

THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA

PROPERTY:

ONE ACRE LOCATED ON STOCK ISLAND

DATE:

_____, 2012

DRAFT

EXHIBIT
"3"

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this _____ day of _____, 2012, by and between **The SCHOOL BOARD OF MONROE COUNTY, FLORIDA**, whose address is 241 Trumbo Road, Key West, Florida 33040 (hereinafter "Tenant"), and the **CITY OF KEY WEST, FLORIDA**, a municipal corporation, whose address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "Landlord").

Whereas, the Tenant has commenced construction at the HOB campus for the relocation of a new elementary school for the students currently housed at Glynn R. Archer School; and

Whereas, the Tenant has indicated the Glynn R. Archer School site will be available once the School Board completes plans to relocate students to the new facility; and

Whereas, on November 2, 2010, 70.5% of the voters casting ballots authorized the Landlord of Key West to move forward with negotiations for the acquisition of the Glynn R. Archer School property; and

Whereas, the Tenant and Landlord have entered into an Agreement for the Conveyance of Real Property pertaining to the Glynn R. Archer School Property; and

Whereas, the said Agreement for the Conveyance of Real Property provides that the Landlord shall permit Tenant to utilize City property adjacent to the Gerald Adams School for the purpose of parking a specific number of Tenant's school buses; and

Whereas, the parties desire a written agreement between them providing the terms and conditions pertaining to the Tenant's use of the City's property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and the rent reserved by Landlord to be paid by Tenant, Landlord hereby leases and demises unto Tenant, and Tenant hereby does lease from Landlord, the Demised Premises, for the terms, and at the rentals, and upon the terms and conditions, hereinafter set forth:

1 - DEMISED PREMISES

1.1 **Landlord's Demise**. Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the rents and the prompt performance by the Tenant of the covenants and agreements, to be kept and performed by the Tenant, the Landlord does lease, let, and demise to the Tenant and the Tenant hereby leases from the Landlord, the described premises (the "Demised Premises"), situate, lying, and being in Monroe County, Florida, and more particularly described on Exhibit "A".

1.2 **Conditions**. The demise is made subject to the following:

(a) Conditions, easements, encumbrances, restrictions, limitations and any other matter of title, if any, now appearing of record;

(b) Zoning and regulatory ordinances of the City of Key West, the County of Monroe, State of Florida, and any other applicable governmental body now existing or which may hereafter exist by reason of any legal authority during the Term of this Lease;

(c) Any questions of survey, the Tenant having satisfied itself as to the boundary lines and contents of the Demised Premises and likewise having satisfied itself with the sufficiency of the present title of Landlord to the Demised Premises;

(d) The proper performance by the Tenant of all of the terms and conditions contained in this Lease.

2 - TERM

2.1 **Commencement Date**. This Lease Agreement is expressly contingent upon, and shall commence upon, the date of the conveyance of the Glynn R. Archer School Property from Tenant to Landlord, if that event occurs. This Lease Agreement may be executed prior to the Commencement Date and will be effective upon execution by all Parties, but prior to the Commencement Date Tenant shall have no right to occupy the Demised Premises. Prior to the Commencement Date, Landlord may accompany Tenant, or its contractors or agents, whenever Tenant seeks to gain access to the Demised Premises. Neither this Lease Agreement nor any evidence thereof shall be recorded in the public records until the Commencement Date.

2.2 **Term**. The term of this Lease shall commence upon the Commencement Date as that term is defined in paragraph 2.1 above and shall terminate on the last day of the ninety-ninth (99th) year thereafter; provided, however, that this Lease Agreement may be terminated as provided herein.

3 – RENT

3.1 During the term of this Lease, Tenant shall pay to Landlord, without demand, setoff, or deduction, except as expressly provided herein, annual rent equal to One Dollar ($1.00), payable no later than the sixtieth day of each year of the term. Tenant may prepay the Rent.

3.2 **Manner of payment.** All amounts payable to Landlord pursuant to this Lease under this Section, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall constitute additional rent, be payable lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, each payment to be paid to Landlord at the address set forth herein or at such other place as Landlord shall from time to time designate. Tenant shall pay any and all taxes, including sales tax any local surcharge or other tax, on the Rent payable pursuant to this Lease in addition to the sums otherwise set forth herein.

3.3 **Net Lease**. It is intended that the Rent provided for in this Lease shall be absolutely net to Landlord throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever, with respect to the Demised Premises and/or the ownership, leasing, operation, maintenance, repair, remediation, rebuilding, use or occupation thereof.

3.4 **Late Payments**. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when due as provided for in this Lease shall bear interest at the highest rate allowable under Florida law from the time they become due until paid in full by Tenant. In addition, Tenant shall pay a late fee in the amount of ten (10%) percent of any amount due from Tenant to Landlord, which is not paid within ten (10) days of the due date for such payment as to any sums due for Rent and within thirty (30) days for any other sums due from Tenant pursuant to this Lease; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the Parties hereto that said late fee should be for reimbursement to Landlord for collection charges incurred as a result of the overdue rent. Such late fee shall be in addition to any interest payable by Tenant as set herein from Tenant's failure to pay any Rent due hereunder. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever not attributable to Landlord, Landlord shall be entitled to charge Tenant an administrative charge of Fifty Dollars ($50.00) during the first ten (10) years of the Initial Term with the amount of the administrative fee increasing by One Dollar for each Lease Year thereafter. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said instrument being dishonored. Landlord's acceptance of late or partial payments shall not be construed to constitute a waiver of the remedies provided to Landlord herein pertaining to Tenant's breach.

3.5 **Non-Subordination**. Not withstanding anything to the contrary contained in this Lease, the fee simple interest in the Demised Premises shall not be subordinated to any leasehold mortgage, lien or encumbrance of any nature whatsoever. Furthermore, the Landlord's right to receive payment under this Lease shall not be subordinated to any debt or equity financing, leasehold mortgage, lien, encumbrance or obligation of any nature whatsoever.

4 - USE

4.1 The Demised Premises shall be utilized by Tenant to park approximately ___ of Tenant's school buses, and for no other purpose.

4.2 **Compliance with Laws and Governmental Regulations**. Tenant shall comply with all Governmental Regulations pertaining to the Demised Premises and its operations thereon. Tenant shall immediately provide Landlord with any and all notices or allegations of noncompliance received from any governmental entity.

4.3 **Nuisances**. Tenant shall not make, suffer, or permit any unlawful, improper, or offensive use of the Demised Premises, or any part thereof, or permit any nuisance thereon. Tenant shall not permit rubbish, refuse, or garbage to accumulate, or any fire or health hazard to exist, upon

or about the Demised Premises. Tenant shall not suffer or permit any waste or mistreatment of the Demised Premises.

4.4 **Abandonment**. If at any time during the term of this Lease, Tenant abandons the Leased Premises or any part thereof, such abandonment shall be deemed a default under this Lease. If Landlord's right of re-entry is exercised following abandonment of the Demised Premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on or around the Demised Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so. For the purposes of this Lease, the Demised Premises shall be deemed to have been abandoned if Tenant is absent from the Leased Premises for thirty (30) consecutive business days.

5 - SURRENDER OF DEMISED PROPERTY

5.1 Tenant shall, upon expiration or termination of the Term hereof, or any earlier termination of this Lease for any cause, surrender to Landlord the Demised Premises, including, without limitation, all alterations, improvements, and other additions thereto that have been made or installed by either Party in or upon the Demised Premises, in good and clean condition and repair, ordinary wear and tear excepted. Unless Landlord requests in writing no less than 6 months prior to the expiration or termination of the Term that all improvements located on the Demised premises be demolished and removed at Tenant's sole expense, all buildings, alterations, improvements and additions made to the Demised Premises by or for Tenant shall remain upon the Leased Premises at the expiration or earlier termination of this Lease and shall be the property of Landlord. Upon request, Tenant will execute and deliver to Landlord a document in recordable form acknowledging the term of the Lease has ended.

6 - QUIET ENJOYMENT

6.1 Subject to the conditions and limitations of this Lease and other rights of Landlord described in this Lease, Landlord covenants that so long as Tenant pays the Rent reserved in this Lease and performs its agreements hereunder, Tenant shall have the right to quietly enjoy and use the Demised Premises for the term of this Lease.

7 - ASSIGNMENT AND SUBLEASING

7.1 Tenant shall not assign this Lease Agreement or any right hereunder without first obtaining the express prior written consent of Landlord, which consent may be withheld for any reason or for no reason.

The consent by Landlord to any assignment or sublease shall not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease.

This Lease is freely assignable by the Landlord, and upon such assignment the Landlord's liability shall cease. The liability of the original Tenant executing this Lease shall continue after any assignment of this Lease or sublease. Any assignment or sublease in contravention hereof is void and shall be considered a default of this Lease.

8 - MAINTENANCE AND REPAIR

8.1 **Tenant shall Maintain the Demised Premises.** Tenant shall be responsible, at Tenant's sole expense, to maintain the Demised Premises in good order. Further, Tenant will keep in good state of repair and in current condition, the Demised Premises and all furnishings brought or placed upon the Demised Premises by the Tenant. The Tenant will not suffer or permit any strip, waste, or neglect of any such personal property to be committed, and the Tenant will repair, replace, and renovate the premises and the personal property as often as it maybe necessary in order to keep the premises and personal property in good repair and condition.

9 - INSURANCE

9.1 **Insurance.** From and after the Commencement Date, the Tenant will keep insured any and all buildings and improvements upon the Demised Premises against all loss or damage by fire, flood and windstorm, together with "all risks," "extended coverage," which said insurance will be maintained in an amount which will be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than full Replacement Cost value of the Demised Premises and all improvements thereon, and all of such policies of insurance shall include the name of the Landlord as an additional insured and loss payee and shall fully protect both the Landlord and the Tenant as their respective interests may appear. In the event of destruction of the said buildings or improvements by fire, flood, windstorm, or other casualty for which insurance shall be payable and as often as such insurance money shall have been paid to the Landlord and the Tenant, said sums so paid shall be deposited in a joint account of the Landlord and the Tenant, requiring signatures of both Tenant and Landlord for withdrawal, in a bank located in Monroe County, Florida designated by the Tenant, and shall be made available to the Tenant for the construction or repair, (including any modification to the improvements sought by the Tenant and approved in writing by the Landlord with Landlord's approval not unreasonably withheld) as the case may be, of any building or buildings damaged or destroyed by fire, flood, windstorm, or other casualty for which insurance money shall be payable and shall be paid out by the Landlord and the Tenant from said joint account from time to time on the estimate of any reliable architect licensed in the State of Florida having jurisdiction of such reconstruction and repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction or repair and at a reasonable cost therefor; provided, however, that the total amount of money necessary for the reconstruction or repair of any building or buildings destroyed or injured has been provided by the Tenant for such purpose and its application for such purpose assured. In the event of the destruction or damage of the buildings and improvements or any part thereof, and as often as any building or improvement on said Demised Premises shall be destroyed or damaged by fire, flood, windstorm, or other

casualty, the Tenant shall rebuild and repair the same in such manner that the building or improvement so rebuilt and repaired, and the personal property so replaced or repaired, shall be of the same or higher value as the said building or improvement and the personal property upon the Demised Premises prior to such damage or destruction, and shall diligently prosecute the reconstruction or repairs without delay and have the same rebuilt and ready for occupancy as soon as reasonably possible from the time when the loss or destruction occurred.

9.2 **Commercial General Liability Insurance**. Tenant shall maintain Commercial General Liability Insurance beginning on the Commencement Date and continuing during the entire Term of this Lease. The Commercial General Liability shall cover those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form [ISO Form CG 00-01] as filed for use in Florida without the attachment of restrictive endorsements other than the elimination of medical payments and fire damage legal liability. Such insurance shall have the following minimum limits:

General Aggregate	$3,000,000
Products/Completed Operations	$5,000,000
Personal & Advertising Liability	$500,000
Each Occurrence	$1,000,000
Contractual Liability	$5,000,000

The Landlord shall be included as an additional insured for Commercial General Liability.

The policy limits for the comprehensive liability insurance may be reviewed by Landlord every five (5) years and adjusted upward, if, in the reasonable discretion of Landlord, such increase in coverage is prudent or if similar projects have begun to require greater insurance coverage.

9.3 **Other Insurance**. Tenant shall maintain workers compensation insurance and any insurance required by law. In addition, Tenant shall maintain such other insurance and in such amounts as may from time to time be reasonably required by the Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated. In the event the Tenant believes the Landlord's requirement for such additional insurance is unreasonable the reasonableness of Landlord's request shall be determined in accordance with the rules of the American Arbitration Association. Such determination as to the requirement of coverage and the proper and reasonable limits for such insurance then to be carried shall be binding on the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this Section. The expenses of such determination shall be borne equally by the parties. This procedure may only be requested on each five (5) year anniversary date of the lease.

9.4 **Delivery of Policies**. On or before the Commencement Date and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this section, the certificates of all such policies of insurance shall be delivered to the Landlord by the Tenant along with the receipted bills evidencing the fact that the premiums

therefore are paid; but nothing herein contained shall be construed as prohibiting the Tenant from financing the premiums.

9.5 **General Requirements**. All insurance to be provided by Tenant under this Lease shall be effected under valid and enforceable policies in such forms, issued by insurers of recognized financial responsibility qualified to do business in Florida which have an A.M rating of "A" or better. All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that (a) no act or negligence of Tenant or anyone acting for Tenant or for any subtenant or occupant of the Demised Premises which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Landlord; and that (b) such policy of insurance shall not be changed or cancelled without at least thirty (30) days written notice to the Landlord, and that (c) the Landlord shall not be liable for any premiums thereon or subject to any assessments thereunder. The requirement of obtaining insurance as provided herein, shall not be deemed a waiver of sovereign immunity of or by the Landlord.

9.6 **Insurance Premiums**. The Tenant shall pay premiums for all of the insurance policies which the Tenant is obligated to carry under the terms of this Lease, and will deliver to the Landlord evidence of such payment before the payment of any such premiums become in default, and the Tenant will cause renewals of expiring policies to be written and the policies or copies thereof, as the Lease may require, to be delivered to Landlord at least ten days before the expiration date of such expiring policies.

10 - CONDEMNATION

10.1 **Eminent Domain; Cancellation**. If, at any time during the Term of this Lease, the Demised Premises or the improvement or building or buildings located thereon, or any portion thereof is taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the Landlord and the Tenant are unable to agree upon what division, annual abatement of rent or other adjustments as are just and equitable, within thirty (30) days after such award has been made, then the matters in dispute shall, be determined in accordance with the rules of the American Arbitration Association. Such determination made by the arbitration shall be binding on the parties. If the legal title to the entire Demised Premises be wholly taken by condemnation, the Lease shall be cancelled.

11 - INDEMNIFICATION

11.1 **Indemnification by Tenant**. To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the Tenant, to the extent of the Landlord's potential liability pursuant to section 768.28, Florida Statutes, does hereby agree to defend, indemnify and hold the Landlord, its officers, and employees, harmless from

and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Tenant or any third party vendor contracted by the Tenant in connection with this Agreement.

11.2 **Insurance.** On the Commencement Date, the Tenant shall cause to be written and in full force and effect a policy or policies of insurance as described in this Lease, insuring the Tenant against any and all claims and demands made by any person or persons whatsoever for injuries received in connection with the operation and maintenance of the Project, improvements, and buildings located on the Demised Premises. Any loss adjustment shall require the written consent of both the Landlord and Tenant.

12 - ENVIRONMENTAL MATTERS

12.1 **No Warranties.** Landlord makes no representations or warranties of any kind whatsoever regarding the Demised Premises or the environmental condition of the Demised Premises or any improvement thereon.

12.2 **Investigation and Remediation.** The Tenant will be responsible to obtain its own environmental reports or studies as it deems prudent at its own expense. Tenant shall provide a copy of any such reports to Landlord. Tenant shall notify Landlord immediately of any discharge or discovery of any hazardous waste at, upon, under, or within the Demised Premises.

12.3 **Tenant's Compliance.** Tenant shall not cause or permit to occur any of the following:

Any violation of Governmental Regulations related to environmental conditions on, under, or about the Demised Premises or arising from Tenant's use or occupancy of the Demised Premises, including, but not limited to, soil and ground water conditions, or

The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Demised Premises or the transportation to or from the Demised Premises of any Hazardous Substances.

13 – ADDITIONAL COVENANTS

13.1 **Taxes, Insurance and Utilities.**

13.1.1 Tenant will pay all Taxes and all hazard insurance premiums due and payable during any calendar year of the term. Landlord will prorate Tenant's share of any Taxes and Insurance due and payable during the calendar year in which the Lease commences or terminates on a per diem basis based on the number of days of the term within such calendar year.

13.1.2 Tenant will be responsible for payment of all Utilities consumed on or charged to the Demised Premises during the term of this Lease. The term "Utilities" shall include electricity, water, sewer, solid waste, telephone and other utility charges.

13.1.3 The term "Taxes" shall mean any real estate taxes or assessments attributable to the Demised Premises. Landlord shall deliver to Tenant any real estate tax bill or assessment upon receipt thereof. Taxes shall be paid by Tenant on or prior to due date.

13.1.4 If the Tenant shall fail, refuse, or neglect to make any of the payments required in this Article, then the Landlord may pay the same, and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such payments, together with interest on all such amounts, at the highest rate allowed by law shall be repaid by the Tenant to the Landlord, upon the demand of the Landlord, and the payment thereof may be collected or enforced by the Landlord in the same manner as though such amount were an installment of rent specifically required by the terms of this Lease to be paid by the Tenant to the Landlord, upon the day when the Landlord demands repayment thereof or reimbursement thereof of and from the Tenant; but the election of the Landlord to pay such taxes shall not waive the default thus committed by the Tenant.

13.2 **Recovery of Litigation Expense**. In the event of any suit, action or proceedings at law or in equity, by either of the Parties hereto against the other by reason of any matter or thing arising out of this Lease, including any eviction proceedings, the prevailing party shall recover not only its legal costs, but reasonable attorneys' fees including appellate, bankruptcy and post-judgment collection proceedings for the maintenance or defense of said action or suit, as the case may be. Any judgment rendered in connection with any litigation arising out of this Lease shall bear interest at the highest rate allowed by law.

13.3 **Condition of the Demised Premises**. Tenant agrees to accept the Demised Premises in its presently existing condition "as is" and with all faults. Tenant acknowledges and agrees that it has determined that the Demised Premises is acceptable for its purposes and hereby certifies same to Landlord. Landlord shall have no responsibility for utilities for the Demised Premises. Tenant, at its sole cost and expense, shall bring or cause to be brought to the Demised Premises adequate connections for water, electrical power, telephone, stormwater and sewage and shall arrange with the appropriate utility companies for furnishing such services with no obligation therefore on the part of Landlord. Tenant acknowledges that the Landlord, and any agent, has made no representations or promises in regard to the Demised Premises except as set forth in this Lease with specificity. Tenant has examined the Demised Premises, the sidewalks and structures adjoining the same, any subsurface conditions, and the present uses and non-uses thereof. The Landlord makes no express warranties and disclaims all implied warranties, including, without limitation, those relating to the environmental condition of the Demised Premises. Tenant accepts the same in the condition in which they now are, without representation or warranty, express or implied, in fact or by law, by the Landlord, and without recourse to the Landlord as to the nature, condition, or usability of the Demised Premises, or the uses to which the Demised Premises may be put. The Landlord shall not be responsible for any latent defect or change of condition in the Demised Premises, and personalty, or of title, and the Rent hereunder shall not

be withheld or diminished on account of any defect in such title or property, any change in the condition thereof, any damage occurring thereto, or the existence with respect thereto of any violations of the laws or regulations of any governmental authority.

13.4 **Right of Entry**. The Landlord and his agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that Landlord shall provide Tenant with five (5) days notice, and such right shall be exercised in such manner as not to interfere with the Tenant or any in the use of the Demised Premises. If the Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the Landlord may enter upon the Demised Premises to make emergency repairs; but if the Landlord exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Tenant from its obligation to keep the Demised Premises in repair and the Tenant shall, upon demand of the Landlord, immediately reimburse the Landlord for the cost and expense of such emergency repairs.

13.5 **No Leasehold Mortgage Permitted**. Tenant shall have no right to encumber, by mortgage or other proper instrument, Tenant's interest under this Lease.

14 - DEFAULT

14.1 **Event of Default**. The occurrence of any of the following events, acts, or circumstances shall constitute an "Event of Default":

14.1.1 Failure by Tenant to make any payment required hereunder when due or to perform any other obligation or duty required of Tenant pursuant to this Lease.

14.1.2 The bankruptcy of, or appointment of a receiver or trustee for, Tenant. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §352, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF ITS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM THE AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE

LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

THIS CLAUSE WAS A MATERIAL CONSIDERATION TO THE LANDLORD TO GIVE THIS LEASE, AND HAD THE TENANT NOT AGREED TO THIS PROVISION, THE LANDLORD WOULD NOT HAVE ENTERED INTO THIS LEASE.

14.1.3 Tenant's voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, or insolvency law.

14.1.4 The sale of Tenant's interest under this Lease by execution or other legal process.

14.1.5 Tenant's making an assignment of a material portion of its assets for the benefit of creditors.

14.1.6 Tenant's dissolution or liquidation.

14.1.6 Failure of Tenant to comply with any of its material obligations to the Landlord as provided for herein such action shall constitute a default under this Agreement.

14.2 **Notice and Cure Periods**. Tenant shall not be deemed to be in default under this Lease in the payment of rent or the payment of any other moneys as herein required or in the furnishing of any bond or insurance policy when required herein unless Landlord shall first give to Tenant ten (10) days' written notice of such default and Tenant fails to cure such default within such ten (10) days of said notice.

Except as to the provisions or events referred to in the preceding paragraph of this section which refer to monetary and insurance obligations, Tenant shall not be deemed to be in default under this Lease unless Landlord shall first give to Tenant thirty (30) days' written notice of such default, and Tenant fails to cure such default within such thirty (30) day period or, if the default is of such a nature that it cannot be cured within thirty (30) days, Tenant fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

Regardless of the notice and cure periods provided herein, in the event that more rapid action is required to preserve any right or interest of the Landlord in the Demised Premises or other detrimental occurrence (such as, but not limited to, payment of insurance premiums, actions to prevent construction or judgment lien foreclosures or tax sales), then the Landlord is empowered to take such action and to request reimbursement or restoration from the Tenant as appropriate.

All default and grace periods shall be deemed to run concurrently and not consecutively.

14.3 **Remedies.** If any such Event of Default occurs and is not cured after the notice described herein, Landlord may, without further notice, immediately or at any time thereafter do one or more of the following:

(a) Reenter and repossess the Leased Premises and remove any property therein and store the same elsewhere at Tenant's expense without relieving Tenant from any liability or obligation hereunder. Landlord shall have the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more, or as otherwise provided by law. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, the balance, if any, to be paid to Tenant.

(b) Relet the Leased Premises or any part thereof for Tenant's account, using commercially reasonable efforts, but without obligation to do so and without relieving Tenant from any liability or obligation hereunder. Any amount received by Landlord from reletting will apply first to all reasonable costs and expenses incurred by Landlord in reletting (including, without limitation, broker's commissions, advertising expenses, cleaning and remodeling expenses).

(c) Bring an action then or thereafter against Tenant to recover the amount of any payment owing by Tenant to Landlord as the same is due, becomes due or accumulates.

(d) Terminate this Lease by giving Tenant written notice thereof, without relieving Tenant from any liability or obligation for payments theretofore becoming due or for present and prospective damages resulting from Tenant's default.

(e) Accelerate the entire amount of Rent due under this Lease for the entire Term of this Lease, which amount shall be immediately due and payable.

14.4 **Default by Landlord**. If Tenant asserts that Landlord has failed to meet its obligations under this Lease, Tenant shall give written notice to Landlord specifying the alleged failure to perform. If Landlord has not begun and pursued with reasonable diligence the cure of any failure of the Landlord to meet its obligations under this Lease within thirty (30) days of receipt of the notice, then Landlord shall be in default but Tenant's remedies are limited to the specific remedies set forth in this Lease. If Landlord's default is caused by factors within Landlord's control and is substantial and continuing and of a nature that prevents Tenant from using the Leased Premises, then Tenant may vacate the Leased Premises and Rent shall abate for the period of such vacation until the default has been cured.

14.5 **Landlord's Right to Perform**. In the event that Tenant by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default under this Lease and such failure shall continue for a period of thirty (30) days after written notice from Landlord specifying the nature of the act or thing to be done or performed, then Landlord may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Demised Premises for such purposes, with notice, if Landlord shall so elect), and Landlord shall not be or be held liable or in any way responsible for any loss, inconvenience, or annoyance resulting to Tenant on account thereof, and Tenant shall repay to Landlord on demand the entire expense thereof, including compensation to the agents and employees of Landlord. Any act or thing done by Landlord pursuant to the provisions of this section shall not be or be

construed as a waiver of any such default by Tenant, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Landlord, hereunder or otherwise. All amounts payable by Tenant to Landlord under any of the provisions of this Lease, if not paid when the amounts become due as in this Lease provided, shall bear interest from the date they become due until paid at the highest rate allowed by law.

14.6 **Assignment of Rents; Receiver**. Tenant pledges with, and assigns to, the Landlord all of the rents, issues, and profits which might otherwise accrue to the Tenant for the use, enjoyment, and operation of the Demised Premises and, in connection with such pledging of the rents, the Tenant covenants and agrees with the Landlord that if the Landlord, upon the default of the Tenant, elects to file suit to enforce the Lease and protect the Landlord's rights, then the Landlord may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a receiver of all and singular the Demised Premises, the improvements, and buildings located thereon; and, thereupon, it is expressly covenanted and agreed that the court shall, forthwith, appoint a receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to the Landlord and without reference to the adequacy or inadequacy of the value of the property, which is subject to the Landlord's lien, or to the solvency or insolvency of the Tenant and without reference to the commission of waste. Nothing in this Section contained shall be construed as empowering the Landlord to collect rents accruing from the Demised Premises, unless and until the Tenant is in default.

14.7 **Late Fees on Past Due Obligations/ Penalty for Non-Monetary Default**.

(a) Monetary Obligations. Landlord shall have the right to charge Tenant a late fee equal to ten (10%) percent of any amount due from Tenant to Landlord, which is not paid when due; provided, however, such payment shall not excuse or cure any default by Tenant under this Lease. It is agreed by the parties hereto that said late fee is reimbursement to Landlord for collection charges incurred as a result of the overdue rent and/or additional rent. Such late fee shall be in addition to any interest payable by Tenant as set forth in this Lease. In the event that any check, bank draft, order for payment or negotiable instrument given to Landlord for any payment under this Lease shall be dishonored for any reason whatsoever, Landlord shall be entitled to charge Tenant an administrative fee of Fifty Dollars ($50.00) for each such instrument in addition to any other charges due under this Lease. In addition, Landlord shall be reimbursed by Tenant for any costs incurred by Landlord as a result of said payment being dishonored. Rent shall be paid to Landlord by electronic means if so requested by Landlord.

(b) Non-Monetary Obligations. Landlord shall have the right to charge Tenant a penalty of $150.00 per day for any violation or failure to perform any of the other conditions, covenants or agreements made by Tenant in this Lease if such violation or failure continues for a period of three (3) business days after written notice thereof to Tenant from Landlord.

If such violation or failure cannot be cured through the use of commercially reasonable efforts within the three (3) business days herein provided, Tenant shall commence to cure such violation or failure within the three (3) business days and diligently pursue such cure to completion within a reasonable time. Furthermore, within the three (3) business days herein

provided, Tenant shall provide Landlord, in writing, a detailed account of its commercially reasonable efforts to cure the violation or failure and the estimated time to fully cure such violation or failure.

TENANT HEREBY ACKNOWLEDGES AND AGREES IF TENANT FAILS TO RESPOND IN WRITING TO LANDLORD WITHIN THREE (3) BUSINESS DAYS OF LANDLORD'S NOTICE TO TENANT, TENANT WILL BE DEEMED TO HAVE ACKNOWLEDGED THAT TENANT IS IN VIOLATION OR HAS FAILED TO PERFORM THE CONDITION, COVENANT OR AGREEMENT STATED IN THE NOTICE BY LANDLORD AND THAT TENANT WILL PAY THE $150.00 PER DAY PENALTY FOR ANY VIOLATION WHICH IS NOT CURED WITHIN THE ABOVE MENTIONED THREE (3) BUSINESS DAYS FROM LANDLORD'S WRITTEN NOTICE TO TENANT.

15 - WAIVER: ACCORD AND SATISFACTION

15.1 The failure of a Party to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease, or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of that or any right or remedy of such Party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. No waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party or their authorized agent. With respect to Landlord, such waiver shall be effective only upon an appropriate Resolution approved by a majority of the commissioners of the City of Key West.

16 - NOTICES

16.1 All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be served on the parties at the addresses indicated below:

To Tenant:

Monroe County School Board
Superintendant of Schools
241 Trumbo Road
Key West, Florida 33040
(305) 293-1400

To Landlord:

City of Key West
City Manager
P.O. Box 1409
Key West, FL 33041
(305) 809-3881

With a copy to:
The City Attorney
P.O. Box 1409
Key West, FL 33041

Any such notices shall be (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (c) sent by telephone facsimile transmission, in which case notice shall be deemed delivered on the day of transmission of such notice and confirmation of such transmission, or (d) sent by personal delivery, in which case notice shall be deemed delivered on the day of actual delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

17- ATTORNEY'S FEES

17.1 In the event of litigation affecting the rights of either Party under this Lease, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

18 - MISCELLANEOUS

18.1 **Entire Agreement**. This Lease and the exhibits attached hereto all exhibits hereto (all of which are expressly incorporated herein by this reference) constitute the sole and exclusive agreement between the parties with respect to the Demised Premises. No amendment, modification, or revision of this Lease shall be effective unless in writing and executed by Landlord and Tenant. No prior written or prior or contemporaneous oral promises or representations shall be binding. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective Parties in any way touching the subject matter of this instrument which are not expressly contained in this Lease.

18.2 **Severability**. If any term or provision of this Lease or the application thereof to any present or future circumstances, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall be in full force and effect, and only the provision found to be unenforceable shall be stricken from the terms hereof.

18.3 **Force Majeure**. Should a party be unable to perform any of its obligations contained in this Lease due to circumstances beyond its reasonable control, including but not limited to labor disputes; Governmental Regulations; fire or other casualty; acts of the other party or the other party's employees, agents, contractors, subcontractors, or invitees; inability to obtain material or services; strikes; or acts of nature, such party shall not be considered in default under the terms of this Lease, the time for performance by such party of the obligation shall be extended for a period of time equal to the length of the delay caused by such circumstances, and the other party

shall not be excused from the obligation to pay all amounts and charges required under this Lease as the same become due except as otherwise expressly provided herein.

18.4 **Governing Law, Venue**. This Lease shall be construed under the laws of the State of Florida, and the venue for any legal proceeding to enforce or determine the terms and conditions of this Lease shall be in the Circuit Court in and for Monroe County, Florida.

18.5 **Binding Effect**. The terms and conditions of this Lease are binding upon the heirs, successors, and assigns of the parties hereto. The obligations of Tenant hereunder shall be joint and several.

18.6 **Usage**. Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. Titles of articles, paragraphs, and subparagraphs of this Lease are for convenience only and neither limits nor amplifies the provisions of this Lease.

18.7 **No Third Party Rights**. The provisions of this Lease are for the exclusive benefit of Landlord and Tenant, and except for rights expressly granted to third parties by the terms hereof, no third party shall have any right or claim against Landlord or Tenant by reason of such provisions or be entitled to enforce any of such provisions against Landlord or Tenant. This Lease creates a landlord/tenant relationship, and no other relationship, between the parties.

18.8 **Time of the Essence**. Time is of the essence in the performance of the obligations of the Parties hereto.

18.9 **Preamble**. Tenant represents and warrants to Landlord that the statements set forth in the Preamble to this Lease are true and correct, and the Parties agree that all such statements are incorporated herein.

18.10 **Waiver of a Jury Trial**. EXCEPT AS PROHIBITED BY LAW, LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF LANDLORD, TENANT OR ANY GUARANTOR. THIS WAIVER IS A MATERIAL INDUCEMENT FOR LANDLORD TO ENTER INTO THIS LEASE. IF THE SUBJECT MATTER OF ANY LITIGATION IS ONE IN THAT THE WAIVER OF JURY TRIAL IS PROHIBITED, NEITHER LANDLORD NOR TENANT SHALL PRESENT AS A NON-COMPULSORY COUNTERCLAIM IN SUCH LITIGATION ANY CLAIM ARISING OUT OF THIS LEASE. FURTHERMORE, NEITHER LANDLORD NOR TENANT SHALL SEEK TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY LITIGATION IN WHICH A JURY TRIAL CANNOT BE WAIVED.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above mentioned.

Two Witnesses:

Sign: _____
Print: _____

Sign: _____
Print: _____

Landlord:

CITY OF KEY WEST, FLORIDA

By: _____
Printed Name: _____
Title: _____
Date: _____

Tenant:

THE SCHOOL BOARD OF MONROE COUNTY, FLORIDA

Sign: _____
Print: _____

Sign: _____
Print: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

DRAFT

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of _____, a _____, on behalf of the _____, who is personally known to me or has produced _____ (state) driver's license or _____ as identification.

My Commission Expires: _____

Notary Public (Signature)

(AFFIX NOTARY SEAL) _____

(Printed Name)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of _____, a _____, on behalf of the _____, who is personally known to me or has produced _____ (state) driver's license or _____ as identification.

My Commission Expires: _____

Notary Public (Signature)

(AFFIX NOTARY SEAL) _____

(Printed Name)

DRAFT